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The time period for reply, if any, is set in the attached communication.

RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EX PARTE JEFFREY A. BEDELL, MICHAEL CODINI, ARTURO GAY,
WILLIAM HURWOOD, BENJAMIN Z. LI, FABRICE MARTIN,
RAMKUMAR RAMACHANDRAN, STEPHEN S. TRUNDLE,
ABHIMANYU WARIKOO, and KYLE N. YOST

Appeal 2008-3433
Application 09/883,508
Technology Center 2100

Oral Hearing Held: November 18, 2008

Before JAMES D. THOMAS, JEAN R. HOMERE, and STEPHEN C. SIU,
Administrative Patent Judges.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for hearing on Tuesday, November
2 18, 2008, commencing at 9:00 a.m., at The U.S. Patent and Trademark
3 Office, 600 Dulany Street, Alexandria, Virginia, before Dan Hawkins,
4 Notary Public.

5 MS. BOBO-ALLEN: Good morning. Calendar No. 29, Appeal
6 No. 2008-3433. Mr. Farres.

7 JUDGE THOMAS: Thank you.

8 MS. BOBO-ALLEN: Um-hum.

9 MR. FARRES: Thank you. Good morning, Your Honors.

10 JUDGE THOMAS: Good morning. You can proceed at any time.

11 MR. FARRES: Okay, thank you. First of all, let me thank you for
12 allowing us to come before you and present our oral arguments. I think for
13 the most part we intend this to be a rather brief presentation or just
14 discussion. I think the briefing for the most part covers some of the general
15 arguments that we think are applicable, but what I wanted to do is just focus
16 you in on one or two specific points that I think might clarify our position
17 and perhaps persuade you that at least some of these rejections should be,
18 should be reversed.

19 In particular, what I want to do just very quickly is to give you a sense
20 of what it is our system is actually doing. What the inventors came up with
21 is a method for essentially copying objects from one folder to another. An
22 object in the context of the invention is a set of functionality that, that gets
23 applied to a dataset to generate useful information or useful data. In
24 particular, there's a business intelligence server that has statistics, data and
25 other information involving any sorts -- any, any, you know, well, a good

1 example would be, for example, like retailing information or merchandising
2 information, and you want to be able to slice and dice that data to get useful
3 information such as, for example, sales within a certain geographic area,
4 sales within a certain period of time, etc. So what objects do is they allow
5 you to encapsulate certain functions to apply or resolve against that data to
6 get and extract the useful or desired information.

7 So with that background, what these claims do is they allow the object
8 data to be copied from one folder to another as one might want to do, for
9 example, if you're applying the same functionality in a new project or in a
10 new or for a new individual let's just say. So claim one is admittedly
11 broadly worded, but we believe that if we look more specifically at claim 6,
12 we start seeing the precise contours of what it is that the inventors are, you
13 know, working towards or what they were intending to, to develop.

14 JUDGE HOMERE: So, counsel, are you, are you saying that claim 1
15 does not capture the essence of the invention?

16 MR. FARRES: No, I think it -- claim 1 captures the essence of the
17 invention. I just don't think we need to go beyond what's in the briefing at
18 this time in order to make our point.

19 JUDGE THOMAS: Have you argued claim 6 in the brief?

20 MR. FARRES: Yes. Yes, Your Honor.

21 JUDGE THOMAS: Okay.

22 MR. FARRES: We did. We separately argued claim 6. You know,
23 our position is that claim 6 better reflects the inventive concept. Claim 1 is
24 admittedly broader but we -- and having said that, we do still think it covers

1 it, but claim 6 I think does a better job of, of really setting forth the contours
2 of what the, the concept is.

3 The primary reference, and perhaps if I can compare and contrast the
4 inventive concept to the primary reference, I can make my point a little bit
5 clearer. The cited reference is a patent to Mariani which discusses the
6 specific function of compiling source code into object code. The claimed
7 invention, on the other hand, as recited in claim 6, talks about the function of
8 copying object code, as an example, from one project to another. The --
9 claim 6, and what I'll do is I'll go -- I'll start with claim 1, because claim 6
10 depends from claim 1 through claim 4.

11 What we believe the, the main -- there's, there's two problems with
12 the, with the rejection. One is -- I've already addressed is the difference
13 between copying object code and compiling which is what the primary
14 reference Mariani relates to. The second problem is that the Examiner, in
15 setting forth the rejection of the steps of claim 1, kind of mixes and -- mixes
16 apples and oranges in terms of how he justifies or, or substantiates the
17 rejection.

18 Let me start off with that point. Claim 1 -- and I'm going to do this,
19 I'm reading claim 1, but I'm doing it in the context of claim 6, recites
20 receiving a command to perform a selected function on a selected object. If
21 we look at what the Examiner is referring to as the selected object, he refers
22 to -- I'm looking at the Examiner's answer on page 4. He refers to source
23 code, and that's understandable, because Mariani talks about compiling
24 source code into the higher-level language object code. Okay. The next step
25 is automatically identifying dependent objects referred to by the selected

1 object. In that limitation, the Examiner as support for the dependent object
2 talks about object code files. Okay, here is where I think there's a little bit of
3 mixing apples with oranges. If we are thinking about applying a function to
4 a selected object, and we've defined the selected object to be source code,
5 then the next step which says determining using a computer processor in
6 appropriate manner of executing the selected function on the selected object,
7 based on the Examiner's rejection, it's a little bit of a non sequitor, because
8 the Examiner is saying that the, that the dependent object is object code. If
9 we're looking at object code as the dependent object, by definition the
10 function has already been performed, i.e., it's been compiled or rebuilt from
11 source code to object code. So the third step of determining using a
12 computer processor appropriate functions to be performed on the dependent
13 subjects doesn't -- or objects doesn't make any sense, because if he is
14 considering the object code to be the dependent object, then the alleged
15 function to be performed, i.e., rebuild or compile, has already been
16 performed, so there is no need to determine whether it needs to be
17 performed. That's -- we believe that's, that's a fundamental problem with the
18 Examiner's cornerstone rejection of claim 6.

19 If we move on then through to claim 4 --

20 JUDGE HOMERE: No, but counselor, let's, let's go back to claim 1
21 here.

22 MR. FARRES: Sure.

23 JUDGE HOMERE: You said the Examiner relies upon figure 2 to
24 show the relationship between the object codes and the source codes?

1 MR. FARRES: I have that the Examiner refers to in -- on page 4 of
2 the Examiner's answer, he is relying on the dependent objects to be the
3 object code files, 82, and that is set forth in column 12, lines 27 through 67
4 of Mariani.

5 JUDGE HOMERE: Yeah, but isn't that taken within the context of
6 figure 2 here where you had a priority of -- you have source codes and object
7 codes, and then you have a dependency relationship between the object
8 codes and the, and the source codes?

9 MR. FARRES: That's right. There is -- absolutely. There certainly is
10 a relationship between the two. Essentially what the compilation function
11 does is it takes the more human legible language of source code and puts it
12 into more machine readable format which is object code. So the "function"
13 as defined by the Examiner is rebuilding or compiling the source code into
14 the object code. The problem with that is that one of the steps of claim 1
15 says determining, and it's precisely the third step down, it says determining
16 using a computer processor -- or excuse me, it's the fourth one down.
17 Determining using a computer processor appropriate functions to be
18 performed on the dependent objects.

19 JUDGE HOMERE: Um-hum. Okay, okay, so, so what are you
20 telling me? Are you telling me that if you have objects and then you have
21 sub-objects depending therefrom and by selecting the sub-objects you're not
22 pretty much accomplishing that fourth step that we're talking about?

23 MR. FARRES: You're not accomplishing the fourth step, because in
24 our case, and let me shift over to the, the inventive concept, we have object

1 files that have embedded within it sub -- for lack of a better word sub-object
2 files.

3 JUDGE HOMERE: Okay.

4 MR. FARRES: Okay, or, or what we call dependent objects.

5 JUDGE HOMERE: Okay.

6 MR. FARRES: So those -- that structure, that hierarchical structure
7 exists before any function is applied, okay.

8 JUDGE HOMERE: Okay.

9 MR. FARRES: In Mariani, you've got the source code on this side or
10 actually on this side. Then you've got the function, i.e., compiling or
11 rebuilding, and then you've got the consequential object code. The
12 Examiner is looking on both sides of the function to substantiate the
13 rejection, whereas the claims, you only look at one side, pre-function, okay.

14 JUDGE HOMERE: Um-hum.

15 MR. FARRES: And we believe that's a fundamental
16 misunderstanding of what the claim requires at claim 1.

17 Now claim 4 and 6, which is what we want to focus the Board's
18 attention because we think -- and admittedly, like I said, I think claim 1 is, is
19 broader and therefore more vulnerable. But if we focus on claim 6, I think
20 we do a better job of seeing what the invention is, because we do believe
21 that a fundamental difference between Mariani, the primary reference, and
22 the claimed concept is this notion of copying the code versus compiling the
23 code, and claim 6 expressly calls out that the selected function talked about
24 in claim 1 is a command to copy a selected object from a source project to a
25 destination project, and our fundamental dispute is, and we separately, we

1 separately argue claim 6 in our briefing, is that the proposed combination
2 that the Examiner sets forth doesn't work, because Mariani is limited to the
3 function of compilation or rebuilding, whereas our, you know, the claim as
4 set forth in 6 talks about the copy -- or the command of copying a selected
5 object from a source project to a destination project.

6 So -- and what the Examiner proposes to do is to take a reference that
7 is exclusively limited to the function of compilation or rebuilding and
8 modifying it with the mere reference and, and actually it's a third reference,
9 Almond, that talks about just in open-ended fashion copying files to a
10 particular folder. So we believe in essence that that combination doesn't
11 work, because there's no suggestion, there's no teaching or there's certainly
12 no motivation or even a reason why one of ordinary skill in the art would
13 take a reference that is clearly limited to and expressly limited to
14 compilation and somehow modify that based on a mere single reference and
15 a third, you know, third reference to, to not make it compilation but make it
16 essentially just the mere function of copying.

17 JUDGE HOMERE: So are you saying that the combination itself has
18 no suggestion of copying at all?

19 MR. FARRES: No. The, the Mariani reference would have their --
20 no one would be motivated to modify the Mariani reference to carry out the
21 specific function of copying, because it is so exclusively and expressly
22 limited to and focused on the concept of compilation that there's just no,
23 there's no reason why one would take that compilation concept and
24 somehow morph it into the more specific copying function that we're
25 expressly claiming in, in claim 6 or setting forth in claim 6.

1 Now we will concede, Your Honor, that claim 1 doesn't recite the, the
2 specific function copying, and to the extent that that failure to expressly state
3 that makes the claim more vulnerable, you know, we would concede that
4 point. But claim 6 does not. It expressly says that the command is to copy a
5 selected file, and we believe that the proposed combination is deficient on
6 its face primarily because one of ordinary skill in the art would not be
7 motivated to take a reference that is so expressly limited to compilation to
8 somehow, like I said, transform or morph that into the specific function of
9 copying.

10 JUDGE THOMAS: Does the brief argue the lack of proper
11 combinability of the three references?

12 MR. FARRES: We do. We do. We say it in -- on page, pages 14 and
13 15, Your Honor, where we say that, you know, the office action cites a
14 passage of Almond, that's the third reference, stating that the user will
15 perform version of activities such as get -- copy one or more multiple objects
16 to the user's local directory. Almond's reference to copying object fails to
17 teach the subject matter of claim 6, because this feature cannot be combined
18 with Mariani in the manner prescribed.

19 Then we set forth some of the features that claim 6 incorporates from
20 claim 1, and then we, we state that Mariani teaches away from a
21 combination with Almond in this context. The office action uses Mariani's
22 system for selectively recompiling object code to purportedly establish how
23 Mariani teaches the elements of claim 1. However, while the Mariani
24 system is specifically designed to selectively recompiling object code -- or
25 that should be source code, it is not reconfigured to copy objects in the

1 manner by which it recompiles object code. Copying and recompiling are
2 different operations.

3 JUDGE THOMAS: We understand what the brief says.

4 MR. FARRES: Yes.

5 JUDGE THOMAS: But based -- we can read it ourselves, okay?

6 MR. FARRES: Yes, Your Honor.

7 JUDGE THOMAS: Another question. Does the first stated rejection,
8 which doesn't include claim 6, are you arguing against the proper
9 combinability of Mariani and Fontana in the brief?

10 MR. FARRES: For purposes of claim 6, I don't think we need to --

11 JUDGE THOMAS: Almond is not used for claim 1.

12 MR. FARRES: That's right.

13 JUDGE THOMAS: Okay. But do you argue in the brief that lack of
14 proper combinability of Fontana with Mariani?

15 MR. FARRES: We do. We set forth in -- on pages 9 through 10,
16 Your Honor, and I believe pages 10 through 12 as well. We don't argue it
17 specifically to claim 6, but we do argue it in, in connection with claim 1.

18 JUDGE THOMAS: All right, any other comments?

19 MR. FARRES: No, Your Honor, that's it.

20 JUDGE THOMAS: Any other panel comments, questions?

21 JUDGE THOMAS: Okay, thank you very much, counsel.

22 MR. FARRES: Thank you, Your Honors.

23 (Whereupon, the hearing concluded at 9:17 a.m., on November 18,
24 2008.)